

Chapter 2.12

ELECTION REFORM ACT*

Sections:

Article 1. General Provisions

- 2.12.005 Title for citation.
- 2.12.010 Findings.
- 2.12.015 Purpose.
- 2.12.020 Liberal construction.
- 2.12.025 Reports and statements--Signature and verification requirements.
- 2.12.030 Reports and statements--Filed where.
- 2.12.035 Reports and statements--Filing fees prohibited.
- 2.12.040 Statements--Public inspection requirements.
- 2.12.045 Preservation from date of filing.
- 2.12.050 Reports and statements--City Clerk responsibilities.
- 2.12.051 Amendment or repeal of chapter.
- 2.12.055 Items of value--Report requirements.
- 2.12.060 Applicability--Severability.
- 2.12.065 Publication of contributions prior to elections.

Article 2. Definitions

- 2.12.070 Interpretation.
- 2.12.075 Adjusting an amount for cost of living changes.
- 2.12.080 Campaign statement.
- 2.12.085 Candidate.
- 2.12.090 Commission.
- 2.12.095 Committee.
- 2.12.100 Contribution.
- 2.12.105 Controlled committee.
- 2.12.110 Cumulative amount.
- 2.12.115 Elected officer.
- 2.12.120 Election.
- 2.12.125 Elective office.
- 2.12.130 Expenditure.
- 2.12.135 Filer.
- 2.12.140 Independent committee.
- 2.12.142 Independent expenditure.
- 2.12.145 Late contribution.
- 2.12.150 Mass mailing.
- 2.12.155 Measure.
- 2.12.160 Period covered.
- 2.12.165 Persons.

Berkeley Municipal Code

Article 3. Fair Campaign Practices Commission

- 2.12.170** Established--Number of members.
- 2.12.175** Term--Appointments and reappointments.
- 2.12.180** Quorum.
- 2.12.185** Election of chairperson.
- 2.12.186** Vice-chairperson.
- 2.12.190** Vacancy filling.
- 2.12.195** Members--Qualifications and restrictions.
- 2.12.196** Avoidance of political conflict of interest.
- 2.12.200** Staff powers and duties.
- 2.12.205** Administrative responsibility.
- 2.12.210** Rules and regulations--Authority.
- 2.12.215** Additional duties.
- 2.12.220** Opinions.
- 2.12.225** Investigation authority and procedures.
- 2.12.227** Subpoena--Testimony under oath.
- 2.12.230** Notice and hearing on violations.
- 2.12.235** Judicial review of actions.
- 2.12.240** Meetings to be open to the public.

Article 4. Disclosure Requirements and Procedures

- 2.12.245** Campaign treasurer--Appointment required--Powers and duties.
- 2.12.250** Campaign expenditure and contribution account--Establishment required-- Procedure for use.
- 2.12.255** Statement of organization--Committee required to file.
- 2.12.260** Statement of organization--Information required.
- 2.12.265** Statement of organization--Change of information--Amendment required.
- 2.12.270** Campaign statement--Filing requirements.
- 2.12.272** Slate mailer organizations' reporting requirements.
- 2.12.275** Campaign statement--Verification.
- 2.12.280** Campaign statement--Information required.
- 2.12.285** Campaign statement--Candidate statement in lieu permitted when.
- 2.12.290** Campaign statement--Consolidation permitted when.
- 2.12.295** Report of late contributions.
- 2.12.300** Contributions--Written instrument required when.
- 2.12.305** Contributions--From persons using other than legal name prohibited.
- 2.12.310** Contributions--By persons on behalf of other persons prohibited.
- 2.12.315** Expenditures--Report requirements--Scope.
- 2.12.320** Anonymous contributions--Restrictions--Payment to City

Berkeley Municipal Code

required when.

2.12.325 Mass mailings--Copies to commission.

2.12.330 Mass mailings by independent expenditure.

Article 5. Expenditure Limitations

2.12.405 Measures--Compensation for petition circulation--Disclosure.

Article 6. Limitations on Contributions

2.12.415 Persons other than candidate--Maximum permitted amount.

2.12.435 Excess amounts--Payment to City Auditor required.

2.12.440 Contributions from certain organizations and business entities prohibited.

Article 7. Enforcement--Penalties For Violation

2.12.445 Complaints--Filing, investigation and commission action.

2.12.450 Actions for compliance--Who is authorized to institute.

2.12.455 Actions for compliance--Procedure required and commission authority.

2.12.460 Violation--Deemed misdemeanor--Penalty.

2.12.465 Actions for compliance--Disposition of amounts recovered.

2.12.470 Violation--Candidate's office forfeited when.

2.12.475 Violation--Candidacy terminated when.

2.12.480 Violation--Persons ineligible for candidacy--Time limit.

2.12.485 Late filing penalties.

*The City Attorney has determined that certain uncodified provisions are unconstitutional. See *Citizens for Jobs and Energy v. Fair Political Practices Comm.* (1976) 16 Cal. 3d 671.

The City Attorney has determined that Ord. 4700-NS § 602 applies only to ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Citizens Against Rent Control v. City of Berkeley* (1981) 454 US 290.)

The City Attorney has also determined that Ord. 4700-NS § 605 applies only to candidate campaigns and ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Pacific Gas and Electric v. City of Berkeley*, (1976) 60 Cal. App. 3d 123).

The City Attorney has determined that Ord. 4700-NS § 517, as modified by Ord. 5895-N.S. § 1, is unconstitutional; see *Meyer v. Grant* (1988) 486 U.S. 414, *Buckley v. American Constitutional Law Foundation* (1999) 525 U.S. 182.

Article 1. General Provisions

Section 2.12.005 Title for citation.

This chapter shall be known and may be cited as the "Berkeley Election Reform Act of 1974." (Ord. 4700-NS § 100, 1974)

Section 2.12.010 Findings.

The people find and declare as follows:

A. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.

B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.

C. Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions.

D. The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate.

E. Previous laws regulating campaign practices have suffered from inadequate enforcement. (Ord. 4700-NS § 101, 1974)

Section 2.12.015 Purpose.

The people have enacted the ordinance codified in this chapter to accomplish the following purposes:

A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.

C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced. (Ord. 4700-NS § 102, 1974)

Section 2.12.020 Liberal construction.

This chapter should be liberally construed to accomplish its purposes. (Ord. 4700-NS § 103, 1974)

Section 2.12.025 Reports and statements--Signature and verification requirements.

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury.

(Ord. 4700-NS § 104, 1974)

Section 2.12.030 Reports and statements--Filed where.

Reports or statements filed under this chapter shall be filed with the City Clerk. (Ord. 4700-NS § 105, 1974)

Section 2.12.035 Reports and statements--Filing fees prohibited.

No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared. (Ord. 4700-NS § 106, 1974)

Section 2.12.040 Statements--Public inspection requirements.

Campaign statements are to be open for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. (Ord. 4700-NS § 107, 1974)

Section 2.12.045 Preservation from date of filing.

All reports, statements and information filed with the City Clerk shall be preserved for at least four years from the date upon which it was required to be filed under the terms of this chapter. (Ord. 5895-NS § 1, 1988; Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 108, 1974)

Section 2.12.050 Reports and statements--City Clerk responsibilities.

With respect to reports or statements filed with him or her pursuant to this chapter, the City Clerk shall:

- A. Supply the necessary forms and manuals prescribed by the commission;
- B. Notify in advance all candidates and known committees of the dates campaign statements are required;
- C. Report apparent violations of this chapter to the appropriate agencies; and
- D. Complete and maintain a current list of all reports and statements filed with his or her office. (Ord. 4700-NS § 109, 1974)

Section 2.12.051 Amendment or repeal of chapter.

This chapter may be amended or repealed by the procedures set forth in this section. If any portion of subsection A is declared invalid, subsection B shall be the exclusive means of amending or repealing this chapter.

- A. This chapter may be amended to further its purpose by ordinance passed by a vote of the City Council of not less than two-thirds vote of its membership, following a public hearing, if at least thirty days prior to passage the amendment has been approved by the Berkeley Fair Campaign Practices Commission by not less than two-thirds vote of its membership, and has been distributed to the news media and to every person regularly receiving communications from the

Berkeley Municipal Code

commission.

B. This chapter may be amended or repealed by initiative approval of the voters of the City of Berkeley. (Ord. 5895-NS § 2, 1988)

Section 2.12.055 Items of value--Report requirements.

Whenever in this chapter the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement. (Ord. 4700-NS § 110, 1974)

Section 2.12.060 Applicability--Severability.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable. (Ord. 4700-NS § 111, 1974)

Section 2.12.065 Publication of contributions prior to elections.

The City shall publish in one or more newspapers at least once in the seven days before each municipal election a list of all persons contributing fifty dollars or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the second pre-election statements. The City shall direct publication in such newspaper or newspapers as are best suited to reach the largest number of Berkeley residents in a cost-effective manner. (Ord. 6513-NS § 1, 1999: Ord. 5895-NS § 1, 1988: Ord. 4946-NS, 1976: Ord. 4700-NS § 112, 1974)

Article 2. Definitions

Section 2.12.070 Interpretation.

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the interpretation of this chapter. (Ord. 4700-NS § 200, 1974)

Section 2.12.075 Adjusting an amount for cost of living changes.

"Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index as last computed in accordance with State of California Government Code, Section 82001. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 201, 1974)

Section 2.12.080 Campaign statement.

"Campaign statement" means an itemized report which is prepared on a form

Berkeley Municipal Code

prescribed by the commission and which provides the information required by Sections 2.12.245 through 2.12.325. (Ord. 4700-NS § 202, 1974)

Section 2.12.085 Candidate.

"Candidate," for the purposes of this chapter, means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure. (Ord. 4700-NS § 203, 1974)

Section 2.12.090 Commission.

"Commission" means the Berkeley Fair Campaign Practices Commission. (Ord. 4700-NS § 204, 1974)

Section 2.12.095 Committee.

"Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than two hundred fifty dollars in a calendar year or makes expenditures exceeding more than two hundred fifty dollars in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 205, 1974)

Section 2.12.100 Contribution.

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the

Berkeley Municipal Code

services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 206, 1974)

Section 2.12.105 Controlled committee.

"Controlled committee" means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 5895-NS § 2, 1988)

Section 2.12.110 Cumulative amount.

"Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since June 4, 1974. (Ord. 4700-NS § 208, 1974)

Section 2.12.115 Elected officer.

"Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Ord. 4700-NS § 209, 1974)

Section 2.12.120 Election.

"Election" means any primary, general, special or runoff election held in the City, including an initiative, referendum or recall election. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 210, 1974)

Section 2.12.125 Elective office.

"Elective office" means any elective office as defined in the Berkeley City Charter. (Ord. 4700-NS § 211, 1974)

Section 2.12.130 Expenditure.

"Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party. (Ord. 4700-NS § 212, 1974)

Section 2.12.135 Filer.

"Filer" means any person filing or required to file any statement or report under this chapter. (Ord. 4700-NS § 213, 1974)

Section 2.12.140 Independent committee.

"Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 4700-NS § 214, 1974)

Section 2.12.142 Independent expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Ord. 6096-NS § 2 (part), 1991)

Section 2.12.145 Late contribution.

"Late contribution" means any contribution of one hundred dollars or more received after the closing date of the last campaign statement required to be filed prior to an election. (Ord. 4700-NS § 215, 1974)

Section 2.12.150 Mass mailing.

"Mass mailing" means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry. (Ord. 4700-NS § 216, 1974)

Section 2.12.155 Measure.

"Measure" means any City Charter amendment, ordinance or other

Berkeley Municipal Code

proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot. (Ord. 4700-NS § 217, 1974)

Section 2.12.160 Period covered.

"Period covered" by a statement or report required to be filed by this chapter means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on June 4, 1974. Nothing herein shall exempt any person from disclosing transactions which occurred prior to June 4, 1974 according to the law then in effect. (Ord. 4700-NS § 218, 1974)

Section 2.12.165 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Ord. 4700-NS § 219, 1974)

Article 3. Fair Campaign Practices Commission

Section 2.12.170 Established--Number of members.

There is established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The commission shall have nine members, including the chairperson. (Ord. 4700-NS § 300, 1974)

Section 2.12.175 Term--Appointments and reappointments.

Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed. (Ord. 4700-NS § 301, 1974)

Section 2.12.180 Quorum.

A majority of the appointed members shall constitute a quorum. (Ord. 4700-NS § 302, 1974)

Section 2.12.185 Election of chairperson.

The commission shall elect its own chairperson. (Ord. 4700-NS § 303, 1974)

Section 2.12.186 Vice-chairperson.

The commission shall elect a vice-chairperson who shall serve the same term of office as the chairperson and who shall assume the powers of the chairperson

Berkeley Municipal Code

in his or her absence. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.190 Vacancy filling.

Vacancies on the commission shall be filled, within thirty days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board. (Ord. 4700-NS § 304, 1974)

Section 2.12.195 Members--Qualifications and restrictions.

Each member of the commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organization or participate in or contribute to a Berkeley municipal election campaign. No member of the commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections. (Ord. 4700-NS § 305, 1974)

Section 2.12.196 Avoidance of political conflict of interest.

In addition to the limitations imposed on members of the commission by Section 2.12.195, each member of the commission shall use his or her best efforts to be independent of and impartial in relation to any person during the time such person is the subject of an investigation by or proceeding before the commission. Such persons include elected officers, current and previous candidates, and committees, as well as any officers or employees of such persons. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.200 Staff powers and duties.

The commission shall have a staff which shall act in accordance with commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the commission in the performance of its duties. (Ord. 4700-NS § 306, 1974)

Section 2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. (Ord. 4700-NS § 307, 1974)

Section 2.12.210 Rules and regulations--Authority.

The commission may adopt, amend and rescind rules and regulations to carry out the purposes of this chapter, and to govern the procedures of the commission. (Ord. 4700-NS § 308, 1974)

Section 2.12.215 Additional duties.

The commission shall, in addition to its other duties:

A. Prescribe forms for reports, statements, notices and other documents required by this chapter;

B. Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this chapter, and explaining the duties of persons and committees under this chapter;

C. Provide assistance to agencies and public officials in administering the provisions of this chapter;

D. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this chapter. (Ord. 4700-NS § 309, 1974)

Section 2.12.220 Opinions.

Any person may request the commission to issue an opinion with respect to his or her duties under this chapter. The commission shall issue the opinion within fourteen days. No person who acts in good faith of an opinion issued to him or her by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen days. (Ord. 4700-NS § 310, 1974)

Section 2.12.225 Investigation authority and procedures.

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this chapter. Within seven days after the receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, which the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. (Ord. 4700-NS § 311, 1974)

Section 2.12.227 Subpoena--Testimony under oath.

After the commission has made a finding of probable cause of a violation of the Berkeley Election Reform Act (BERA) or this chapter, in any investigation or hearing conducted by the commission, the commission may:

A. Subpoena witnesses, take testimony under oath and require the production of records by subpoena; and

B. Issue orders requiring any person believed to have information relevant to matters under examination to submit written answers under penalty of perjury to written questions, and specify a reasonable date by which such answers must be submitted. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.230 Notice and hearing on violations.

Berkeley Municipal Code

After the commission determines there is probable cause for believing that a provision of this chapter has been violated and makes a good faith effort to give reasonable notice to the person or persons involved in the allegation, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 312, 1974)

Section 2.12.235 Judicial review of actions.

Any person may seek judicial review of any action of the commission. (Ord. 4700-NS § 313, 1974)

Section 2.12.240 Meetings to be open to the public.

All meetings of the commission shall be open to the public. (Ord. 4700-NS § 314, 1974)

Article 4. Disclosure Requirements and Procedures

Section 2.12.245 Campaign treasurer--Appointment required-- Powers and duties.

A. Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.

B. No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.

C. All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly," as used in this section, means not later than five days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received less than five days before the closing date. All contributions shall be separated from and may not be commingled with any personal funds of the recipient or any other person. (Ord. 4700-NS § 400, 1974)

Section 2.12.250 Campaign expenditure and contribution account--

Establishment required-- Procedure for use.

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee in a bank located in Alameda County. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. Where a candidate or a committee is permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint checking account for the candidate and the committee.

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the contribution checking account by paying the remaining balance in the checking account to the candidate or committee for his or her or its use in any lawful manner within ninety days after the date of election, unless upon good cause an extension is granted by the commission.

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

F. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably

Berkeley Municipal Code

believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply. (Ord. 6859-NS § 1, 2005; Ord. 5895-NS § 1, 1988; Ord. 4947-NS §§ 1, 2, 1976; Ord. 4733-NS § 1, 1974; Ord. 4700-NS, § 401, 1974)

Section 2.12.255 Statement of organization--Committee required to file.

A. Subject to the exception in Section 2.12.255(B), every committee under Section 2.12.095 of this chapter shall file with the City Clerk a statement of organization within ten days after it is formed as a committee.

B. Every committee that forms during the period between the closing date of the last pre-election statement and the election shall file with the City Clerk, by hand delivery or by such means as the commission may prescribe, a statement of organization no later than the close of the next business day.

C. The date on which a committee formed, and not the date on which the committee filed its statement of organization, shall determine the committee's obligation to file the campaign statements and late contribution reports required by this chapter. All committees, whether formed before or after the date of the final pre-election statement, but before the date of an election, are subject to late contribution reporting requirements. (Ord. 5895 § 1, 1988; Ord. 4700-NS § 402, 1974)

Section 2.12.260 Statement of organization--Information required.

The statement of organization required by Section 2.12.255 shall include:

A. The name, street address and telephone number, if any, of the committee;

B. The name, street address and telephone number of each candidate, if any, with which the committee is affiliated or connected;

C. The full name, street address and telephone number, if any, of the treasurer and other principal officer;

D. The full name and office sought by each candidate and the title and ballot number if any, of each measure, which the committee supports or opposes;

E. A statement of whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly;

F. The disposition of surplus funds which will be made in the event of dissolution;

G. The account number and name of the bank at which the campaign checking account, required by Section 2.12.250(A), is maintained; if the information required by this section is unavailable at the time of filing, the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;

Berkeley Municipal Code

H. The cash on hand at the time of filing the statement of organization;

I. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 403, 1974)

Section 2.12.265 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change. (Ord. 4700-NS § 404, 1974)

Section 2.12.270 Campaign statement--Filing requirements.

A. Each candidate and each committee shall file no fewer than two campaign statements prior to an election, excluding run-off elections, and one campaign statement following the election, excluding run-off elections. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. The semi-annual campaign statement that is filed pursuant to state law following an election shall serve as the post-campaign statement required by this section. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

B. Each candidate and committee involved in a run-off election, and each committee supporting or opposing a candidate participating in a run-off election, shall file one campaign statement prior to the run-off election in addition to any other campaign statements required by this section and one campaign statement following the run-off election. The semi-annual statement that is filed pursuant to state law following a run-off election shall serve as the post-campaign statement required by this section. The campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law does not establish the filing dates for campaign statements in run-off elections, the commission shall set the necessary filing dates.

C. 1. Notwithstanding subsections A and B of this section, a candidate or officeholder who plans to receive contributions of less than two hundred fifty dollars and who plans to make expenditures of less than two hundred fifty dollars in a calendar year may file a short form campaign statement for that calendar year as prescribed by state laws and regulations. The period covered by the short form is the calendar year. No other campaign statements must be filed by a candidate or officeholder who has filed a short form campaign statement for activity in the calendar year unless the candidate receives two hundred fifty dollars or more in expenditures.

2. During the six months prior to an election in which the candidate or officeholder is being voted upon, a candidate or officeholder who files a short form campaign statement and subsequently receives contributions totaling two hundred fifty dollars or more or makes expenditures totaling two hundred fifty dollars or more during the calendar year shall send written notification to the City Clerk, and each candidate or officeholder contending for the same office, as follows:

Berkeley Municipal Code

a. The notification shall be sent within forty-eight hours of receiving contributions totaling two hundred fifty dollars or more or making expenditures of two hundred fifty dollars or more;

b. The notification shall include the name and address of the candidate or officeholder, the elective office for which the short form campaign statement was filed, the date of the election, and the date contributions totaling two hundred fifty dollars or more were received or expenditures totaling two hundred fifty dollars or more were made;

c. The notification shall be sent by telegram, guaranteed overnight delivery, personal delivery, or facsimile transmission. (Ord. 6329-NS § 2, 1996; Ord. 4700-NS § 410, 1974)

Section 2.12.272 Slate mailer organizations' reporting requirements.

A. Slate mailer means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

B. For the purposes of this chapter, a slate mailer organization shall be defined as an organization which meets the definition of California Government Code Section 82048.4.

C. A slate mailer organization which produces one or more slate mailers supporting or opposing inter alia any candidate for Berkeley elective office or any Berkeley measure shall file one copy of its campaign reports with the City Clerk. Campaign reports are those reports slate mailer organizations are required to file pursuant to California Government Code Sections 84218, 84219, 84220 and 84221. (Ord. 6096-NS § 2 (part), 1991)

Section 2.12.275 Campaign statement--Verification.

A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that he or she has made reasonable inquiry into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section 2.12.025. (Ord. 4700-NS § 411, 1974)

Section 2.12.280 Campaign statement--Information required.

Each campaign statement required by this article shall contain the following information:

A. Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals;

B. The total amount of contributions received during the period covered by

Berkeley Municipal Code

the campaign statement from persons who have given fifty dollars or more;

C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;

D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;

E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;

F. The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

G. The full name of each person from whom a contribution or contributions totalling fifty dollars or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;

H. The full name and street address of each person to whom an expenditure or expenditures totalling fifty dollars or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

I. In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

J. The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

K. In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 412, 1974)

Section 2.12.285 Campaign statement--Candidate statement in lieu permitted when.

Whenever any provision of this chapter requires the filing of a campaign

Berkeley Municipal Code

statement by a candidate or committee, a statement signed under penalty of perjury may be filed in lieu thereof that to the best of his or her knowledge not more than two hundred dollars has been received or expended. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 413, 1974)

Section 2.12.290 Campaign statement--Consolidation permitted when.

Two or more committees which act jointly in support of or in opposition to any candidate or measure may file consolidated campaign statements under this chapter. (Ord. 4700-NS § 414, 1974)

Section 2.12.295 Report of late contributions.

All candidates and committees, including committees qualified under Section 2.12.095 but prior to filing required statements under Section 2.12.255 of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports may be by any written means of communication, and do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 415, 1974)

Section 2.12.300 Contributions--Written instrument required when.

All monetary contributions of fifty dollars or more shall be made by written instrument containing the name of the donor and the name of the payee. (Ord. 4948-NS (part), 1976; Ord. 4700-NS § 420, 1974)

Section 2.12.305 Contributions--From persons using other than legal name prohibited.

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes. (Ord. 4700-NS § 421, 1974)

Section 2.12.310 Contributions--By persons on behalf of other persons prohibited.

No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person. (Ord. 4700-NS § 422, 1974)

Section 2.12.315 Expenditures--Report requirements--Scope.

No expenditure shall be made, other than overhead or normal operating

Berkeley Municipal Code

expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this chapter. (Ord. 4700-NS § 423, 1974)

Section 2.12.320 Anonymous contributions--Restrictions--Payment to City required when.

No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totalling more than fifty dollars in a calendar year. An anonymous contribution of more than fifty dollars shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the general fund of the City. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 424, 1974)

Section 2.12.325 Mass mailings--Copies to commission.

A copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the commission. Such copies sent to the commission shall be public record. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 425, 1974)

Section 2.12.330 Mass mailings by independent expenditure.

When a mass mailing which supports or opposes any candidate for Berkeley elective office or the qualification, passage or defeat of a ballot measure is paid for by independent expenditures a completed statement in the following form must appear on the envelope and on each page or fold of the mass mailing in no less than 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter in the mailing:

NOTICE TO VOTERS
(Required by City of Berkeley)

This mailing is not authorized or approved by any City of Berkeley election official, candidate for elective office or campaign committee.

It is paid for by _____
(Name)

(Address, City, State)

(Ord. 6096-NS § 2 (part), 1991)

Article 5. Expenditure Limitations

Section 2.12.405 Measures--Compensation for petition circulation--Disclosure.

If compensation is received by any person for obtaining signatures or for the circulation of petitions to place a measure on the ballot, the terms of such compensation shall be clear and visible on the signature sheet of the petition. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 517, 1974)

Article 6. Limitations on Contributions

Section 2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 5895 § 1, 1988; Ord. 4700-NS § 600, 1974)

Section 2.12.435 Excess amounts--Payment to City Auditor required.

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the general fund of the City. (Ord. 4700-NS § 604, 1974)

Section 2.12.440 Contributions from certain organizations and business entities prohibited.

No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution. (Ord. 6096-NS § 1, 1991; Ord. 4701-NS § 1 (part), 1974; Ord. 4700-NS § 605, 1974)

Article 7. Enforcement--Penalties For Violation

Section 2.12.445 Complaints--Filing, investigation and commission action.

Any person who believes that a violation of any portion of this chapter has

Berkeley Municipal Code

occurred may file a complaint with the commission. If the commission determines that there is reason to believe a violation of this chapter has occurred, it shall make an investigation. If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this chapter. (Ord. 4700-NS § 710, 1974)

Section 2.12.450 Actions for compliance--Who is authorized to institute.

Any resident of the City who believes that a violation of this chapter has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 4700-NS § 711, 1974)

Section 2.12.455 Actions for compliance--Procedure required and commission authority.

Before instituting an action pursuant to Section 2.12.450, a person must file a written request with the commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the commission is dismissed without prejudice. If the commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter. (Ord. 4700-NS § 712, 1974)

Section 2.12.460 Violation--Deemed misdemeanor--Penalty.

Any person who knowingly or wilfully violates any provision of this chapter is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly, or unlawfully contributed, expended, gave or received. (Ord. 4700-NS § 700, 1974)

Section 2.12.465 Actions for compliance--Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section 2.12.450, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the general fund of the City. In an action brought by the commission or the City Attorney, the entire amount recovered shall be paid to the general fund of the City. (Ord. 4700-NS § 701, 1974)

Section 2.12.470 Violation--Candidate's office forfeited when.

If after his or her election a candidate receives a final judgment of conviction

Berkeley Municipal Code

of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office. (Ord. 4700-NS § 702, 1974)

Section 2.12.475 Violation--Candidacy terminated when.

If a candidate receives a final judgment of conviction of this chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election. (Ord. 4700-NS § 703, 1974)

Section 2.12.480 Violation--Persons ineligible for candidacy--Time limit.

No person convicted of a violation of this chapter shall be a candidate for City elective office for a period of four years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section. (Ord. 4948-NS (part), 1976; Ord. 4700-NS § 704, 1974)

Section 2.12.485 Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections 2.12.270 or 2.12.295 of this chapter and who files such report or reports after the deadlines imposed in these sections, shall, in addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section 91013, which is incorporated herein. (Ord. 6096-NS, § 2 (part), 1991)